Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

NO.

In the Supreme Court of the United States

OCTOBER TERM, 1999

RACHAEL M. BROADWAY,
PETITIONER

VS.

DONALD G. SINEX, ET AL.
RESPONDENTS

ON PETITION OF WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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27 pp

QUESTIONS PRESENTED

This is an action to redress the deprivation under color of a statue of a privilege secured to plaintiff by the United States Constitution, Article III, Section 2 (1), providing for equal rights of citizens or all persons within the jurisdiction of the United States. This action resulting from the deprivation under color of law of the State of Texas of a right, privilege and immunity secured to plaintiff by the fifth and fourteenth amendments to the United States Constitution.

1. SHOULD A JUDGE DISQUALIFY HIMSELF IN PROCEEDINGS THEY HAVE SERVED AS A LAWYER IN THE MATTER IN CONTROVERSY?

2. SHOULD A JUDGE RECUSE HIMSELF IN ANY PROCEEDING IN WHICH HE HAS A PERSONAL BIAS OR PREJUDICE CONCERNING THE SUBJECT MATTER OR A PARTY, OR PERSONAL KNOWLEDGE OF DISPUTED EVIDENTIARY FACTS CONCERNING THE PROCEEDING?

3. SHOULD A JUDGE ACTING IN CLEAR AND COMPLETE ABSENCE OF PERSONAL JURISDICTION BE STRIPPED OF HIS JUDICIAL IMMUNITY?

4. DOES THE CONDUCT OF AN OFFICIAL IN VIOLATION OF STATE LAW PROCURE A FINDING OF COLOR OF LAW OR STATE ACTION FOR FEDERAL STATUTORY OR CONSTITUTIONAL PURPOSES?

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Petitioner:	Rachel M. Broadway 195 Westwood Drive East Route 4, Box 4016 Trinity, Texas 75862
Petitioner's counsel: Pro se	
Private Respondent	Donald G. Sinex Morris & Campbell 600 Jefferson, Suite 1617 Houston, Texas 77002-7906
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Private Respondents counsel:

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Public Respondent:

Honorable Earl B. Stover II
Ninth Court of Appeals
1001 Pearl St., 3rd. Fl.
Beaumont, Texas 77701

Honorable Bill Beggs
1025 S. Redwood
Kountze, Texas 77625

Honorable Ronald L. Walker
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Honorable Don Burgess
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Honorable Ross Sterling
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1001 Pearl Street
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Attorney General
State of Texas
Post Office Box 12548
Austin, Texas 78711-2548

s/s Rachael M. Broadway

Rachael M. Broadway

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TABLE OF AUTHORITIES CITED

CASES;

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IN THE SUPREME COURT OF THE UNITED STATES

Rachel M. Broadway

Petitioner

V.

Donald G. Sinex, et al.

Respondent

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

Rachel M. Broadway respectfully petitions for a Writ of Certiorari to review the judgment of the United States of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The United States Court of Appeals for the Fifth Circuit did not consider the issues of a judge's unlawful acts disqualifying him from absolute immunity. This opinion is not published.

JURISDICTION

The date on which the United States Court of Appeals decided my case was December 09, 1998.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: March 15, 1999, and a copy of the order denying rehearing appears at Appendix B

The jurisdiction of this Court is invoked under 28 U.S. 1254(l)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The CONSTITUTIONAL CIVIL RIGHTS ACTS; 1983 & 1985

THE CONSTITUTION of the United States article VI(2) "This Constitution, and Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

The CONSTITUTION of the UNITED STATES amendment V

The CONSTITUTION of the UNITED STATES amendment XIV

U.S.C.A. 42 Par. 1983-1076 "To state a claim, plaintiff must allege that conduct of which he or she complains was committed while defendant was acting under color of state law, and that such conduct deprived plaintiff of rights, privileges or immunities secured by federal law or United States Constitution.

U.S.C.A. 42 Par. 1985 "With respect to legislators and judges the immunity doctrine may not be circumvented by allegations of improper motives; rather, the availability of the immunity depends on the character of the conduct under attack."

STATEMENT OF THE CASE

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT; NO. 98-40323; (appendix A) page 2 states:

"Broadway argues that the state-court judges were not entitled to judicial immunity----------. Broadway's suit against the state-court judges involves the

judges' rulings while presiding over the case which was properly before them, for which the judges are absolutely immune from civil suit."

As difficult as it is for plaintiffs to overcome absolute judicial immunity, there have been a fair number of important circuit court decisions which found it inapplicable. *See HARPER V. MERKLE*, 638 F.2d 848 (5th Cir. 1981); *Cf AMMONS V. BALDWIN*, 705 F.2d. 1445 (5th Cir. 1983).

With respect to legislators and judges, the immunity doctrine may not be circumvented by allegation of improper motives; rather, the availability of the immunity depends on the character of the conduct under attack. *See HAMPTON V. CITY OF CHICAGO*, Cook County, ILL., C.A.7 (ILL.) S.Ct. 1413, 1414, 415 U.S. 917, 39 L.Ed.2d 471.

The immunity defense is a affirmative one, and the defendant bears the burden of pleading and proven that he acted in good faith in relying on the legal procedure employed. *See JONES V. PREUIT L. MAULDIN*, 851 F.2d 1321, 1325; *HOWERTON V. GABICIA*, 708 F.2d 380, 385 N.10 (9th Cir. 1983).

The unique element of a claim under section 1983 is the requirement that the conduct complained of was done "under color of

law," *See SHIRLEY V. STATE NAT'L BANK OF CONN.*, 493 F.2d 739 (2d Cir.), cert. denied, 419 U.S. 1009 (1974); *OUZTS V. MARYLAND NAT'L INS.CO.* 505 F.2d 547 (9th Cir. 1974, cert. denied, 421 U.S. 949 (1975); *GRECO V. ORANGE MEMORIAL HOSP. CORP.*, 513 F.2d. 873 (5th Cir.), cert. denied, 423 U.S. 1000 (1975), *ROBERTS V. LOUISIANA DOWNS, INC.*, 742 F.2d 221 (5th Cir. 1984).

If a statue is valid, it overrides inconsistent state law by virtue of the Supremacy Clause, art.VI cl 2 of the United States Constitution which provides in relevant part that "(t)his Constitution and Laws of the United States which shall be made in Pursuance thereof -----shall be the supreme Law of the Land: and the Judges in every State shall be bound thereby, any Thing in the Constitution or laws of any State to the Contrary notwithstanding."

42 U.S.C.A. 1985 (507) The judge would have acted in clear and complete absence of personal jurisdiction and would have been stripped of judicial immunities and if his acts were part of a conspiracy he would be held properly liable under this section for consequences thereof.

REASONS FOR GRANTING THE WRIT

The United States Court of Appeals For the Fifth Circuit, No. 98-40323, on December 9, 1998 Conference Calendar page 2. stated: "Broadway's suit against the state-court judges involves the judges' rulings while presiding over the case which was properly before them, for which the judges are absolutely immune from civil suit."

I filed a timely Petition for Rehearing stating they had generalized the judges and asked for reconsideration. On Mar. 15, 1999 the Court stated:"It is ORDERED that the petition for rehearing is DENIED."

I requested a rehearing on the following:

In the 88th Judicial Court of Hardin, County; Kountze, Texas No. 29,675, the presiding judge was the Honorable Earl B. Stover II. He presided over seven hearings before being elected to the state Ninth Court of Appeals, Beaumont, Texas. Not being aware of his conflict-of interest concerning our case until after he had ruled against us.

The conflict-of interest are listed below, also these are listed in my original Complaint filed filed March 4, 1997.

In the Hardin County Clerk's Office, Kountze, Texas on file are the followings instruments.

1. vol.746 page 271-a WARRANTY DEED WITH VENDOR'S LIEN. This deed was prepared in the law office of Earl B. Stover II. Making him trustee. This property is listed on our Notice of Lis Pendens.

2. vol.85 page 47-Shows. if he had ordered an abstract title, his name would have been on it.

3. vol. 822 page 278-He was involved in a business transaction with the defendant.

A copy of all three of these instrument was included in my request for a rehearing with the 5th Court of Appeals.

How can you have a fair and impartial trial when you are in a no win situation.

The Fifth Court of Appeals states on page 2: "Broadway filed a document entitled "Constitution Question," in which which she states that she is notifying the court as required by Fed. R. App. P. 44, which requires a notice to this court of a constitution challenge to a federal statue." Broadway's appeal does raise a constitutional challenge to a federal statue, and the notice is unnecessary."

In my original complaint to the court was: 42 U.S.C. Par. 1983, 1985, Being denied "Due Process" under the "Color of Law"

I realize it is unprecedented for someone of my status, a senior citizen, woman and being pro se to challenge a judge that has misused his authority. My husband, brother and my brother-in-law all fought in World War II for this freedom granted by the Constitution of the United States, and the 42 U.S.C.A. 1983,1985 should and must be upheld by the highest court of this land.

CONCLUSION

This cause was a Civil Rights Complaint, first filed in th United States District Court in Washington D.C. A change of venue moved it to the United States District Court for the Southern District of Texas, another change of venue moved it to the United States District Court of the Eastern District of Texas. The issues filed in the original Complaint has not been addressed by either court. This action was filed to redress a wrong committed by a judge in the 88th Judicial District Hardin, County, Kountze, Texas.

The petition for a Writ of Certiorari should be granted to allow this action to be tried by a fair and impartial court.

Respectfully submitted,

S/S Rachel M. Broadway

Rachel M. Broadway

DATE: June 11, 1999

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED
DEC, 09, 1998
CHARLES R. FULBRUGE III
CLERK

No. 98-40323
Conference Calendar

RACHAEL M. BROADWAY,

Plaintiff-Appellant,

versus

DONALD G. SINEX ET AL.,

Defendants-Appellees.

- - - - - -

Appeal from the United States District Court for the Eastern District of Texas USDC No. 1:97-CV-455

- - - - - -

Before DAVIS, DeMOSS, and STEWART, Circuit Judges.
PER CURIAM:*

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*Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Rachael Broadway, proceeding *pro se*, appeals the district court's grant of defendants' motions to dismiss and the denial of her motion for a default judgment. Broadway filed a civil rights action against the oil companies who were defendants in her state-court suit asserting title to property, the attorneys who represented the oil companies, two attorneys who were expert witnesses in the case, two state trial-court judges who presided over the case, three state appellate-court judges who affirmed the trial court's summary judgment, and the state appellate-court clerk of court.

Broadway argues that the state-court judges were not entitled to judicial immunity and that she was entitled to a default judgment. Broadway does not raise an argument challenging the dismissal of her claims against the private defendants or the state appellate clerk of court, and we consider these arguments abandoned. *See Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993). Broadway's suit against the state-court judges involves the judges' rulings while presiding over the case which was properly before them, for which the judges are absolutely immune from civil suit. *See Mitchell v. McBryde*, 944 F.2d 228, 230 (5th Cir. 1991). Dismissal of Broadway's suit was thus proper.

The record indicates that the defendants filed motions to transfer the suit and motions to dismiss the suit before Broadway filed a motion for a default judgment. Broadway was not entitled to a default judgment. *See McCorstin v. United States Dept. of Labor*, 630 F.2d 242, 244 (5th Cir. 1980). Broadway also argues that the state Attorney General has joined the conspiracy to deprive Broadway of property by representing the state judges and the state appellate clerk of court. The state Attorney General is not named as a defendant in Broadway's suit. We do not have jurisdiction to address a claim against someone for whom there is no judgment from the district court.

Broadway filed a document entitled "Constitutional Question," in which she states that she is notifying the court as required by Fed. R. App. P. 44, which requires a notice to this court of a constitutional challenge to a federal statute. Broadway's appeal does not raise a constitutional challenge to federal statute, and the notice is unnecessary. AFFIRMED.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-40323

U.S. COURT OF APPEALS
F I L E D
MAR 15 1999

RACHAEL M. BROADWAY,

Plaintiff-Appellant

versus

DONALD G. SINEX, ET AL.,

Defendants - Appellees.

Appeal from the United States District Court for the
Eastern District of Texas
USDC No. 1:97-CV-455

ON PETITION FOR REHEARING

Before DAVIS, DEMOSS and STEWART, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.

FOR THE COURT:

S/S HAROLD R. DeMOSS, JR.

HAROLD R. DeMOSS, JR.
UNITED STATES CIRCUIT JUDGE

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

RACHEL M. BROADWAY,
Plaintiff,

vs. CIVIL NO. 1:97-CV-0455

DONALD G. SINEX, PAUL J. FRANZETTI,	§
JAMES P. PENNINGTON, DAVID	§
JUNKINS, GLEN L. KIRBY, STEVEN A.	§
SMITH, CAROL ANNE FLORES, DON	§
BURGESS, BILL BEGGS, RONALD L.	§
WALKER, EARL B. STOVER, 11, ROSS A.	§
SEARS, ATLANTIC RICHFIELD COMPANY,	§
ARCO OIL & GAS CO., MURPHY	§
EXPLORATION AND PRODUCTION CO.,	§
THE LOUISIANA LAND AND	§
EXPLORATION COMPANY, SNYDER	§
OIL CO. and INEXCO OIL CO.',	§

Defendants.

ORDER

BEFORE the Court is Defendants Flores, Burgess, Beggs, Walker, Stover and Sears' Motion to Dismiss and Defendants Sinex, Franzetti, Pennington, Junkin, Kirby, Smith, Atlantic Richfield Company, ARCO Oil & Gas Co.,

Murphy Exploration and Production Co., The Louisiana Land and Exploration Company, Snyder Oil Co. and Inexco Oil Co.'s Motions to Dismiss and Plaintiffs Responses. The Court is of the opinion that Defendants' Motions are meritorious.

THEREFORE, it is **ORDERED** that Defendants' Motions are **GRANTED**.

Plainitffs claims against all defendants in the above-entitled suit are **DISMISSED WITH PREJUDICE**. Costs are to be assessed against the plaintiff.

All other Motions' Which are currently pending in this lawsuit are **DISMISSED AS MOOT**.

SIGNED this 12TH day of January, 1998.

S/S ILLEGIBLE

UNITED STATES DISTRICT JUDGE

APPENDIX D

IN THE STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

FILED JANUARY 28, 1998

RACHEL M. BROADWAY,
Plaintiff,

vs.

	§
	§
DONALD G. SINEX, PAUL J. FRANZETTI,	§
JAMES P. PENNINGTON, DAVID	§
JUNKINS, GLEN L. KIRBY, STEVEN A.	§
SMITH, CAROL ANNE FLORES, DON	§
BURGESS, BILL BEGGS, RONALD L.	§
WALKER, EARL B. STOVER II, ROSS A.	§
SEARS, ATLANTIC RICHFIELD Co.,	§
ARCO OIL & GAS COMPANY,	§
MURPHY EXPLORATION AND PRODUCTION	§
Co.,	§
THE LOUISIANA LAND AND	§
EXPLORATION COMPANY, SNYDER	§
OIL CO. and INEXCO OIL Co.	§
Defendants.	§

CIVIL NO. 1:97-CV-0455

ORDER

BEFORE the Court is Plaintiff Broadways Motion for Relief from On Alternate (sic), Motion for New Trial, After careful consideration, the Court Motion without merit.

THEREFORE, it is **ORDERED** that Plaintiffs Motion is **DENIED**.

SIGNED this 28th day of January, 1998.

S/S ILLEGIBLE

UNITED STATES DISTRICT JUDGE